

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

David Lewis Rush,)	C/A No. 4:12-814-JFA-TER
)	
Petitioner,)	
)	
vs.)	ORDER
)	
Warden, Evans Correctional Institution,)	
)	
Respondent.)	
_____)	

The *pro se* petitioner, David Lewis Rush, is an inmate with the South Carolina Department of Corrections. He brings this action pursuant to 28 U.S.C. § 2254 challenging his state court convictions for assault and battery.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation and opines that the habeas petition should be dismissed for failure to prosecute, in accordance with Rule 41(b) of the Federal Rules of Civil Procedure.

The respondent filed a motion for summary judgment. An order was then issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying petitioner of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. The petitioner failed to file a response.

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).


The petitioner was also advised of his right to file objections to the Report and Recommendation, which was entered on the docket on August 27, 2012. However, the petitioner did not file any objections to the Report within the time limits prescribed. In the absence of specific objections to the Report of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

The Magistrate Judge has properly considered the factors in determining whether to dismiss an action under Rule 41(b) and this court agrees with the Magistrate Judge's recommendation.

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation proper and incorporated herein by reference. Accordingly, this action is dismissed with prejudice for failure to prosecute under Fed. R. Civ. P. 41(b).

IT IS SO ORDERED.

September 18, 2012
Columbia, South Carolina

A handwritten signature in black ink, reading "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.
United States District Judge